89-1086

Supreme Court, U.S.
FILED
JAN 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner

V.

GEORGE H. KLUMPNER

Respondent

ON WRIT OF CERTIORARI FROM THE
ILLINOIS SUPREME COURT

PETITIONER'S APPENDIX
Volume Two

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FAMILY COURT DIVISION

In Re The Custody of	)	
	)	
Sarah Nicole Klumpner	)	File No. 92288
	)	
Judith K. Klumpner	)	
	)	
Petitioner,	)	FINDINGS & ORDER
	)	
vs.	)	
	)	
George H. Klumpner,	)	
	)	
Respondent.	)	

The above-entitled matter came on for hearing before the undersigned, one of the judges of the above-named Court, on the 12th day of January, 1982, at the Hennepin County Government Center, City of Minneapolis, State of Minnesota.

Barbara L. Heck, Esq., appeared for and on behalf of the petitioner. Franz P. Jevne, Esq., appeared for and on behalf of the

respondent.

Based upon all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

I

That petitioner obtained an ex parte restraining order of this Court on October 5, 1981, signed by Judge Eugene Farrell which restrained and enjoined the respondent from visitation as contained in the amended Judgment and Decree for Dissolution of Marriage filed in the Circuit Court of the 19th Judicial District, Lake County, Illinois, which had been filed on August 24, 1981.

II.

That said Order was based upon petitioner's affidavit alleging an emergency existed which created an immediate threat to the

physical and emotional health of the minor child under Minnesota Statutes Annotated 518A.03, Subd. 1, Subsection (c)(2).

III

That the Affidavit in support of the ex parte restraining order issued by Judge Farrell on October 5, 1981, was based on the allegation by the petitioner that there was sexual abuse to the minor child of the parties by respondent during his visitation in Minnesota with the minor child on September 7, 1981.

IV

That Minnesota Statutes Annotated 518A.14, Subdivision 1, states as follows:

> If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with sections 518A.01

to 518A.25 or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

That Minnesota Statutes Annotated Section 518A.03, Subd. 1 (c) states as follows:

> The child is physically present in this state and (1) the child has been abandoned or (2) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.

That Minnesota Statutes Annotated Section 518A.03, Subd. 1 (d) states as follows:

> It appears that no court in another state would have jurisdiction under prerequisites substantially in accordance with clauses (a), (b), or (c), or a court of another state has declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child, and (2) it is in the best interest of the child that a court of this state assume jurisdiction.

That Minnesota Statutes Annotated Section 518A.03, Subd. 2 states as follows:

> Except under clauses (c) and (d) of Subdivision 1, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

The Court finds that the Illinois Court has not lost jurisdiction as respondent is still an Illinois resident. In fact, both parties have appeared before the Illinois Court on September 2, 1981, and the Court granted respondent specific visitation rights, including the visitation on September 7, 1981.

That after these proceedings were commenced by petitioner in this Court in Minnesota, the respondent filed a petition for change of custody on November 19, 1981, in the Illinois Circuit Court and petitioner filed a motion to dismiss the action for lack of jurisdiction.

The Illinois Court, on December 28, 1981,

held that it had paramount jurisdiction as opposed to Minnesota, and was exercising its jurisdiction.

V

The Court finds that Minnesota has jurisdiction in this matter under M.S.A. 518A.03, Subd. 1(c). However, it does not have primary jurisdiction since the State of Illinois has not lost jurisdiction, has affirmatively held that it will exercise its jurisdiction and is a court of competent jurisdiction to hear the matters contained in M.S.A. 518A.03, Subd. 1(c). See Landa v. Norris, _____ N.W.2d _____, Finance and Commerce, December 24, 981, a copy of which is hereto attached.

VI

Minnesota Statutes Annotated 518A.20, Subd. 2, states as follows:

> Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in

> this state for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.
>
> A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.
>
> Upon request of the court of another state a competent court of this state may order a person in his state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

This Court finds that the Illinois Court has primary jurisdiction to resolve the issues between the parties. The allegations of the abuse to which a child may have been subjected to in the State of Minnesota during respondent's visitation can be submitted to

the Illinois court pursuant to M.S.A. 518A.20, Subd. 2.

Under M.S.A. 518A.20, the Court in Illinois may request this Court to hold an evidentiary hearing in reference to the need for protective orders regarding visitation; the need for altering visitation or the need for testimony in reference to respondent's motion pending in Illinois for a change of custody.

That under Subd. 2 of M.S.A. 518A.20, the petitioner and her witnesses may voluntarily give their testimony in this state for use in a custody proceeding outside this state, and therefore such testimony could be submitted to this court for use in the proceedings in Illinois regarding custody and visitation.

Any verification in reference to the respondent would require verification in the State of Illinois for future child visitation

and any limitations on visitation handled by the Illinois Court since he is within that Court's jurisdiction and subject to its powers of contempt.

VII

That respondent's motion for attorney's fees should be denied since the issues submitted for determination are in the best interest of the child and should be addressed by a court of competent jurisdiction.

ORDER

The Court hereby declines to exercise jurisdiction in this matter and the proceedings herein are dismissed subject to the right of the Illinois Court to request of this Court to take such evidence as it deems proper and necessary, and further subject to the petitioner on motion presenting such evidence as she deems proper to be submitted to the Court of Illinois for its considera-

tion in the matters pending before this court.

It is hereby ordered that respondent's motion for attorney's fees is hereby denied.

It is hereby ordered that a copy of this Order be sent to the attorneys of record for service on their clients with an Affidavit of Service to be filed with the Clerk of Court's Office.

BY THE COURT:

/s/ Delila F. Pierce
Delila F. Pierce
Judge of District Court

Dated this 1st day
of February, 1982.

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL
CIRCUIT, LAKE COUNTY,
ILLINOIS

IN RE: THE MARRIAGE)
)
Klumpner) CEN. NO. 80D1638
and)
Klumpner,)

ORDER

CIRCUIT CLERK

This cause coming on to be heard upon hearing upon a return of a rule to show cause; for a change of custody and for an order directing 50% contribution from Judith Klumpner for a 1979 federal tax deficiency, the court having heard the argument of counsel and finding the Judith Klumpner personally absented herself in spite of having been served with a notice to produce, It is hereby ordered:

1) Petition for fees of Stephen Katz is continued to 4/28/82.

2) Hearing on Petition for a change of custody is continued to April 2, 1982 at 9:00 a.m.

3) The court finds Judith Klumpner in contempt of court for her willful failure to furnish visitation with the minor child to George Klumpner and hereby issues a body attachment against Judith Klumpner and stays execution of same until April 2, 1982.

4) Richard Rinella's oral motion for the appointment of a guardian ad litem for the minor child is denied.

5) George Klumpner's petition for contribution to an IRS tax deficiency is granted and Judith Klumpner is hereby ordered to pay George Klumpner the sum of $232.58 which said sum may be deducted from child support payments.

6) Judith Klumpner is directed to file responsive pleadings within 7 days from the date hereof.

ENTER:

/s/Alphonse Witt
JUDGE

Dated at Waukegan, Illinois this
19 day of March, 1982.

STATE OF ILLINOIS	)	
	)	ss
COUNTY OF LAKE	)	
		IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS
IN RE THE MARRIAGE	)	
	)	
OF	)	
	)	
JUDITH K. KLUMPNER	)	NO. 80 D 1638
	)	
AND	)	
	)	
GEORGE KLUMPNER	)	

ORDER

This cause coming on to be heard on various Petitions heretofore filed by both parties and all culminating in a hearing which commenced on August 5, 1982, and was continued to and concluded on September 21, 1982, and the Court being fully advised finds:

That George, Judith Klumpner and the minor child, Sarah, are all in need of

extended psychiatric counseling with the direct objective of effecting a normal, healthy relationship between George and his daughter, Sarah;

That under the existing circumstances, there is not serious endangerment to Sarah if she continues in the custody of Judith and it would be in Sarah's best interest to so continue;

That there is no credible evidence that George has ever physically or sexually abused or molested Sarah; however, when she does visit with George, Sarah's personality demonstrates that such visitation has, on occasion, caused Sarah to become upset and anxious;

That Judith is personally convinced that Sarah's exposure to George, through visitation, is detrimental to Sarah; however, such belief is factually unsupported by credible

evidence and is irrational.

IT IS THEREFORE ORDERED:

That George's Petition for Modification of Custody is denied;

That George, Judith and Sarah Klumpner all submit themselves to extended psychiatric counseling with the primary objective of promoting a healthy, father-daughter relationship between George and Sarah;

That George enjoy, in Cook County, the following visitation with Sarah;

1. November 26, 27 and 28 of 1982, from 10:00 a.m. until 7:00 p.m. each day;

2. December 30 and 31 of 1982, and January 1 and 2, of 1983, from 10:00 a.m. until 7:00 p.m. each day.

Travel expenses for transportation to and from Illinois shall be solely the responsibility of Judith;

3. George may, if he chooses, visit with Sarah in the State of Minnesota on one other Saturday

each month between the hours of 9:00 a.m. until 7:00 p.m., provided he notifies Judith of his intended visit at least 7 days in advance.

That this cause be set for status as to the progress of the above-ordered counseling and also as to visitation on February 11, 1983, at 9:00 a.m. in Room C-404;

That in all other regards the Petitions of the parties' are denied.

ENTER:

/s/ Alphonse F. Witt
Alphonse F. Witt,
Associate Judge

Dated at Waukegan, Illinois
this 1st day of October, 1982.

cc: Richard Rinella, Esquire
One North LaSalle Street
Chicago, Illinois 60602

Mr. Frank G. Roux
305 Washington Street
Waukegan, Illinois 60085

STATE OF ILLINOIS)
)ss
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL
CIRCUIT, LAKE COUNTY,
ILLINOIS

IN RE: THE MARRIAGE OF)
)
JUDITH K. KLUMPNER) GEN. NO. 80D1638
AND)
GEORGE KLUMPNER)

ORDER

This cause coming on to be heard on all pending matters, and the court being advised that there remains pending a certain juvenile proceeding in the courts of Minnesota,

It is hereby ordered that all pending matters are continued generally until further notice.

ENTER:

/s/ Emilio Santi
JUDGE

Dated at Waukegan, Illinois this
28th day of February, 1983.

APPENDIX C-3

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
JUVENILE COURT DIVISION

Sarah Klumpner, a minor,
by Richard Kahn, her
guardian ad litem,

Plaintiff,

vs.

George H. Klumpner,

Defendant.

ORDER AND
MEMORANDUM

D.C. #128101-97
D.C. #796654

The above-entitled matter came duly on for hearing before the Honorable Allen Oleisky, judge of the above-named Court on th· 30th day of March, 1983 at 326 Court House, City of Minneapolis, County of Hennepin, State of Minnesota.

APPEARANCES WERE AS FOLLOWS:

Irvin E. Schermer, Esq., appeared for and on behalf of the Plaintiff, Sarah Klumpner, a minor and her Guardian ad Litem, Richard

Kahn.

Franz P. Jevne, III, Attorney at Law, appeared for and on behalf of Defendant, George H. Klumpner.

Upon the motions of Defendant and his attorney, Franz P. Jevne, and upon all the records, files and proceedings herein, together with the legal memoranda, the Court hereby makes the following Order:

IT IS HEREBY ORDERED:

1. That Richard Kahn, as Petitioner in the dependency/neglect proceedings, is hereby granted twenty days leave of the Court to amend the Petition alleging dependency/neglect, so as to conform with Minn. Stat. Section 260.131.

2. That Richard Kahn, as Guardian ad Litem, is hereby dismissed and that there shall be a new Guardian ad Litem appointed to protect the interests of the minor child,

pursuant to Minn. Stat. Section 260.155(4)(c).

3. That until such time that a full evidentiary hearing on the issues of dependency and neglect is heard, all protective orders precluding Judith Klumpner from delivering the person of the minor child to the Defendant, and precluding the Defendant from taking delivery of the person of the minor child, shall remain in full force and effect.

4. That the previous Order of this Court dated December 23, 1982 ordering default judgment is hereby stayed and Defendant is granted leave of Court to submit a verified Answer to the Complaint alleging an assault on the minor child.

5. Provided Defendant submits a verified Answer, the Order dated December 23, 1982 will thereby be vacated.

6. Should Defendant fail to interpose a verified Answer to the Complaint in the personal injury matter as set forth above, Plaintiff shall, nonetheless, give to Defendant the three day notice of application for default judgment required by Minnesota Rule of Civil procedure 55.01(2), and shall furnish a bond under the Minnesota Rules of Civil Procedure 55.01(4) as required by the Court which shall hear the application for default. Said personal injury matter shall be proved up before a judge of the regular District Court panel.

7. That each of Defendant's motions not specifically dealt with above are hereby denied.

8. That the attached memorandum shall be made a part of this Order.

BY THE COURT:

/s/ Allen Oleisky
Allen Oleisky
Judge of District Court
Juvenile Court Division

Dated this 5th day of July, 1982.

MEMORANDUM

The primary questions presented on review are whether the Court's order for default judgment should be vacated, whether the entire action should be dismissed for lack of subject matter and personal jurisdiction, and whether the action should be dismissed by reason of res judicata and collateral estoppel.

The present case involves allegations of sexual abuse of a minor child within the State of Minnesota. Under these circumstances, jurisdiction over the subject matter of this type of action rests on Minn. Stat. Section 260.111. This statute gives

the Juvenile Court original and exclusive jurisdiction over neglected and dependent children within the Sate of Minnesota.

The Court also has jurisdiction over the subject matter and personal jurisdiction in that the action was initiated as a tort action. Minn. Stat. Section 543.19. The Complaint alleges an assault occurring within the state and by virtue of Defendant's failure to answer, the allegations are admitted.

The protective order issued in the present case is a valid exercise of the court power. When a child is found to be dependent or neglected within the state, the state is not required to give full faith and credit to the custody decisions of a foreign state. In Re Longseth, 282 Minn. 28, 162 N.W.2d 365 (1968). In addition, the Court has authority to answer a protective order when a plaintiff

is threatened with irreparable harm. Harris Stanley Coal and Land Company v. Chesapeake and Ohio Ry. Co. 154 F.2d 450 (6th Cir. 1946).

Defendant's appearance on November 24, 1982 also acts as a consent to jurisdiction over his person. State v. Rust 98 N.W. 2d 271 (Minn. 1959).

Defendant argues that the action must be dismissed on the grounds of res judicata and collateral estoppel. The minor child Plaintiff in this case was not a party to the Family Court proceeding in Minnesota nor to the child abuse hearing in Illinois. The presiding judge in Illinois denied a motion for appointment of a Guardian ad Litem. Thus, the minor child was not represented in the Illinois child abuse proceedings.

It is axiomatic that unless a person is a party to the cause and as such possess a

voice in the proceedings, he/she cannot be bound by the results of the litigation. Midland Loan Finance Co. v. Lorentz 209 Minn. 278, 296 N.W.2d 911 (1941) (concurring opinion). Moreover, it appears that some improprieties existed in the appointment and use of Dr. Petrauskas as a court appointed psychiatrist in the Illinois court action so as to cast doubt upon the issue of child abuse being fully and fairly litigated.

Finally, it appears to the Court that there may have been some legitimate confusion on the Defendant's part or legitimate reasons for failing to submit an Answer to the personal injury claim and therefore in the interests of justice, the Court hereby provides for vacation of the default judgment consistent with this Order.

A.O.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

JUVENILE DIVISION

In the Matter of the Welfare)
of:)
SARAH KLUMPNER) File No.
) 128101-97
) ORDER

The above-entitled matter came on before the undersigned on the 2nd day of February, 1984, upon Respondent-Father's motion for an order of this Court as follows:

1. Dismissing the petition for dependency and neglect for lack of jurisdiction.

2. Vacating all protective orders restraining Judith Klumpner Schermer from

delivering the minor child to George Klumpner.

3. Ordering Judith Klumpner Schermer to deliver answers to interrogatories previously served on her.

4. Requiring Judith Klumpner Schermer to pay attorney fees and expenses necessitated by her not having answered interrogatories.

Irvin E. Schermer, Esq., appeared as counsel on behalf of the Petitioner and the Minor Child; Wright S. Walling, Esq., appeared on behalf of the Guardian ad Litem; David W. Skogerboe, Esq., appeared on behalf of the Respondent-Father.

The Court having considered the argument and memoranda of counsel, and based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That Respondent-Father's motion

for an order dismissing the petition for lack of jurisdiction is hereby denied.

2. That Respondent-Father's motion for an order vacating all protective orders restraining Judith Klumpner Schermer from delivering the minor child to George Klumpner is hereby denied.

3. That Judith Klumpner Schermer is hereby ordered to answer Respondent-Father's interrogatories on or before February 6, 1984, unless she makes herself available for deposition prior to that date.

4. That Respondent-Father's motion for attorney's fees and expenses is hereby denied.

BY THE COURT:

/s/ H. Peter Albrecht
H. Peter Albrecht
Judge of Juvenile Court

Dated: February 3, 1984.

MEMORANDUM

Hennepin County Juvenile Court has subject matter jurisdiction pursuant to Minnesota Statute 260.111 as indicated in the order of the Honorable Allen Oleisky, dated July 5, 1983. The question presented by the respondent in bringing this motion at this time is whether or not the Uniform Child Custody Jurisdiction Act gives Illinois "primary" jurisdiction. It is not entirely clear to this Court that the Uniform Child Custody Jurisdiction Act applies in the instant case since the stated purpose of the act is to avoid relitigation of custody decisions of other states and to avoid jurisdictional competition between states in matters of child custody. MS 518A.01. The case before this Court is not one of child custody. The child's mother was granted custody in Illinois and none of the parties

are seeking an order from this Court that would change that custody order. In this respect the instant case is distinguished from Landa v. Norris, 313 N.W.2d 423 (1981) and In re Mullins, 28 N.W.2d 56 (1980), both of which involved litigation of the central issue of custody.

Even assuming that the Uniform Child Custody Jurisdiction Act applies, this Court still has jurisdiction to hear this matter since it is the "home state" of the child. MS 518A.03 (subd. 1) (a). Furthermore, it is in the best interests of the child that a court of this state assume jurisdiction because the child and at least one contestant have a significant connection with the state, and there is available in this state substantial evidence concerning the child's present and future care, protection, training, and personal relationship. MS

518A.03 (subd. 1) (b).

Finally, even if the relief sought in the present action were to be considered a modification of a custody decree under the Uniform Child Custody Jurisdiction Act, the record before this Court indicates that the Illinois Court has specifically stayed further proceedings in that state until resolution of the Hennepin County proceedings and there have been no visitation rights granted the respondent-father since February 25, 1983.

Judith Klumpner Schermer has been ordered to answer respondent's interrogatories on the basis of this Court's having determined that she is, in essence, a "party" to the proceeding. This determination is based upon Rules 39, 40, 42, and 43 of the Rules of Procedure for Juvenile Courts and upon MS 260.135 (subd. 1) and MS 260.155 (subd. 2,

6). It appears that Mrs. Schermer was initially represented by the office of Richard Saliterman at the inception of these proceedings and was represented by John F. Alden of his office at the default hearing before the Honorable Allen Oleisky held December 23, 1982. Therefore, service of the interrogatories upon Richard Saliterman was sufficient to require her response. Respondent's request for attorney's fees in regard to his motion to compel answers has been denied because this motion was by agreement of the parties combined with his motion for dismissal and thus did not necessitate an additional court appearance.

HPA

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
IN JUVENILE COURT

In Re the Matter of the Welfare of	)J.C. File No.)127101-97
SARAH KLUMPNER	)D.C. File No.) 796654) FINDINGS OF FACT) CONCLUSIONS OF) LAW, AND ORDER

The above-entitled matter came on for trial before the undersigned; one of the Judges of the above-named court, on February 13, 14, 15, 16, 17, 23, and 24, 1984.

The matter originally appeared pursuant to an amended petition filed by Petitioner, Richard Kahn, maternal uncle of the minor child herein, alleging dependency and neglect pursuant to Minnesota statute. Counter-Petition was filed during the course of the proceeding by the father, George H. Klumpner,

also alleging dependency and neglect but on other grounds.

Irvin E. Schermer, Esq., on behalf of the Petitioner, and on behalf of the minor child;

David Skogerboe, Esq., on behalf of Respondent George H. Klumpner;

Wright S. Walling, Esq., on behalf of Patricia Hill, court-appointed guardian ad litem;

Judith Schermer, mother of the minor child, appeared throughout the trial pro se.

Also present in court during portions or all of the trial were Richard Kahn Petitioner; Daniel Schermer, stepfather of the minor child; Patricia Hill, court-appointed guardian ad litem; Barbara Kahn, Maternal grandmother of the minor child; and Enger Olson Klumpner, paternal grandmother of the minor child.

On all of the files, records, proceedings

herein, the testimony adduced at trial and the arguments of counsel, the Court being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. George H. Klumpner and Judith Schermer were married in the state of Illinois on September 13, 1969. The minor child, Sarah, was born to them on December 31, 1978. They were divorced on July 8, 1981.

2. Prior to the marriage of the parents and specifically during periods prior to the birth of Sarah, the Respondent Father, George H. Klumpner, had undergone psychiatric and psychological evaluation and treatment by a number of persons. During that period of time, the use and abuse of alcohol and drugs was a contributing factor to many of his psychological problems.

3. Following Sarah's birth, George H. Klumpner began to drink heavily and was frequently intoxicated, engaged at various times in the use of drugs, and evidenced interest in pornography, including child pornography. This interest in pornography became one of the major aspects of his personality.

4. George Klumpner began to exhibit abnormal sexual interest in Sarah and this, along with his dreams about killing Sarah, his physical abuse of the infant, and the mother's fears for both her safety and that of the child, contributed to the mother's decision to leave the Respondent Father and move from Illinois to Minnesota with the child. Sarah and her mother now reside in Hennepin County, Minnesota.

5. Immediately prior to her departure from Illinois, Judith Schermer instituted

divorce proceedings against George Klumpner in the Circuit Court of Lake County, Illinois, which thereafter granted the dissolution and gave legal custody of Sarah to Judith, subject to various visitation rights of the Respondent. During the course of these proceedings, numerous court hearings were held and substantial hostility and conflict arose between the parties over all issues, including visitation.

6. Between September 26, 1980 and September 2, 1981, visitation between Respondent and the minor child was limited to "day only" visits in the presence of at least one of his parents. Following miscellaneous hearings and arguments, this order was changed by order dated September 2, 1981 and at that time, Respondent was permitted visitation rights in Minnesota during the entire period from 6:00 p.m. on September 4,

1981 and returned her at 2:00 p.m. on September 7, 1981.

8. During the period of visitation, Respondent and the child stayed at the University Inn, a "Best Western" motel, in Minneapolis, Minnesota. When Respondent returned Sarah from the visit, Sarah's hair was wet and matted, she appeared dazed and stared vacantly, and would not respond to her mother's questions. Shortly thereafter the child informed her mother that the father had hurt her vagina while she was "crouching" in the motel bathtub, and that he had been wearing a necklace and shirt, but no pants.

9. On September 8, 1981, Sarah was brought to the office of a pediatrician where, as a result of examination, his records reflect a complaint by the child that "Daddy hurt my vagina." An examination by a gynecologist revealed that the hymen was

intact at that time.

10. Following the visit in September, 1981, the child began to have substantial regression in her behavior, including night fears, bedwetting, lack of toilet control, and crawling rather than walking. While on a trip to the North Shore of Lake Superior in late September, 1981, Sarah became hysterical when taken to a "Best Western" motel with a "Crown" logo in front. She stated it was "daddy's motel" and asked if he was going to come and hurt her.

11. As a result of continued regression and traumatized behavior following that visit with the father, the child was taken by the mother to see Dr. Stanley W. Shapiro, a child psychiatrist, for medical attention. At Dr. Shapiro's initial interview with Sarah on November 6, 1981, she described being frightened during the visitation with the

father in the motel by an object that looked like a caterpillar and indicated that her father had a "purple stick," that she had seen his penis, and that her father rubbed his penis.

12. During a second interview with Dr. Shapiro on November 11, 1981, the child told him that her vagina had been hurt in the bathtub. She picked up a doll and purple crayon and tried to put it into the doll's mouth, stating that the purple stick had rinsed her tongue and that it had scared her. She also stated that the father had hurt her vagina with a stick. That based on his interviews with Sarah and his observations of her, Dr. Shapiro testified that he believed that the minor child had been sexually molested by the father during the September, 1981 visitation.

13. Between September 4 and September

7, 1981, during the course of his visitation with Sarah Klumpner, Respondent George Klumpner sexually abused said child by inappropriate touching of her genital area and by touching his penis to her mouth.

14. The father also had custody of the minor child in the State of Illinois on September 6, 1982, between the hours of 10:00 a.m. and 8:00 p.m. of that day. On return of the child by the father to the Illinois home of her grandmother, the child's hair was wet and matted and she initially appeared dazed and would not respond to questions. She then began again to react abnormally by running around the room, striking out at those present, banging her head on the furniture and threatening to cut her mother into pieces. Later that evening, while assisting Sarah go to the toilet, the material grandmother, Barbara Kahn, noticed that

Sarah's genital area was red. Sarah prevented her grandmother from "wiping" her, saying that the father had hurt her vagina. The child then asked if her father would go to jail if she told what he had done to her.

15. On the same evening after return from visitation, the child told her mother that her father had inserted his finger into her rectum, put his penis into her mouth, had put her head into his lap while he was not wearing pants, and rubbed her vagina and told her that this would make her feel "hot and good."

16. The child was examined by a pediatrician on September 8, 1982, and it was the opinion of the pediatrician that it was "very questionable" as to whether the hymen was intact. The external genitalia and rectal area did not show any bruising or abrasion. An internal vaginal exam was not

performed.

17. The child was again seen by Dr. Stanley Shapiro, this time on nine occasions between September 13, 1982 and November 18, 1982 Dr. Shapiro reported that the child had told him that the father had put his finger into her rectum, had put his penis into her mouth, and rubbed her vagina. She also told Dr. Shapiro that her father's "purple stick" was his penis. Dr. Shapiro stated his belief that the child was sexually abused by the father in September, 1982.

18. On January 24, 1983, the Illinois Department of Child and Family Services conducted an investigation and concluded, based on said investigation, that there was credible evidence that the father had abused the child.

19. On February 16, 1983, Dale Dowson, supervisor of the family Violence Division of

the Minneapolis Police Department, conducted a videotape interview of the child during the course of which she gave contradictory statements in answer to questions regarding possible sex abuse, but demonstrated through the use of anatomically correct dolls that the father had placed his penis in her mouth. Detective Dowson stated that in his opinion, based upon years of experience, the child had been sexually abused by the father.

20. Dr. Susan Lund and Dr. Jane McNaught, experts in the area of sexual abuse of children, testified that after reviewing Dr. Shapiro's notes, transcripts of prior hearings and tape recordings of the child's statements and the aforementioned videotape, that in their opinion the father had sexually abused the minor child.

21. The validity of the statements by the child regarding sexual abuse is supported

by the age-inappropriate knowledge the child has concerning sexual matters, the relative consistency with which the statements have been repeated to several individuals over a long period of time, the regressive behavior demonstrated by the child following both incidents and the affect of the child while recounting the abuse.

22. On September 6, 1982, Respondent during a visitation with Sarah in the State of Illinois, sexually abused said child by inserting his finger in her rectum, rubbing her vagina and placing his penis into her mouth.

23. That Judith Schermer and Sarah Klumpner are both in need of psychotherapy or other ongoing counseling in order to adequately meet the needs of Sarah Klumpner resulting from the sexual abuse to which she has been subjected.

CONCLUSIONS OF LAW

1. The minor child, Sarah Klumpner is a dependent and neglected child as to her father, George H. Klumpner, within the meaning of Minnesota Statute 260.015, Subd. 6(b) and (d); and Minnesota Statute 260.015, Subd. 10(b), (c), and (d).

2. The minor child, Sarah Klumpner, is dependent with regards to her mother, Judith Schermer, within the meaning of Minnesota Statute 260.015, Subd. 6(b).

ORDER

IT IS HEREBY ORDERED:

1. That the child Sarah Klumpner be adjudicated a dependent and neglected child.

2. That the protective order now in effect be continued and that the father shall be barred from all visitation and contact with said child until further order of this Court.

3. That this matter is scheduled for disposition hearing before this Court on June 5, 1984, at 1:30 p.m., with all parties to submit proposed dispositional plans on that date.

BY THE COURT:

/s/ H. Peter Albrecht
H. Peter Albrecht
Judge of District Court
Juvenile Division

Dated: April 25, 1984.

Let the attached memorandum be made a part of the foregoing Findings of Fact, Conclusions of Law and Order.

MEMORANDUM

All parties to this proceeding agree that based upon the statements she has made over the past two years regarding sexual contact with her father, Sarah Klumpner is a dependent child. The question of whether or not her reports of abuse are correct becomes,

in essence, a question of whether her father is so disturbed an individual that he could have committed the alleged acts or whether her mother is so disturbed that she would have "prompted" Sarah to say these things in order to prevent further visitation. Although respondent raises yet a third possibility of there having been abuse by another individual such as Daniel Schermer, this theory has no support in the evidence presented. The experts who testified raise an additional question of whether or not the mother, or anyone, could prompt a child of Sarah's age to repeatedly make the statements she has made with the age inappropriate accuracy and the affect with which the statements were made.

This Court has concluded that the child could not have been "coached" or "prompted" to such an extent and that she has been

telling the truth. There are some unanswered questions raised by the testimony of George Klumpner and his mother to the effect that there was neither the time nor the opportunity for the second episode to have occurred. In weighing the credibility of the witnesses and considering all of the evidence presented, the Court has essentially discounted this testimony and has believed the child, as corroborated by adult witnesses.

Finally, it is noted that this Court has reached a contrary conclusion to that reached in Illinois shortly after the second episode in September of 1982. While it is argued by respondent that the Illinois court reached its decision while the evidence was still "fresh," the intervening period of time has produced significant differences in the evidence presented at the two hearings,not

the least of which is Dr. Shapiro's testimony regarding what he was able to learn from Sarah after nine sessions with her subsequent to the Illinois hearing. The evidence presented to this Court in February of 1984 is sufficiently convincing under the applicable standard of proof to lead this Court to conclude that Sarah was abused by her father.

H.P.A.